

Law Office of Nora J. Chorover

nchorover@choroverlaw.com

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MAR - 1 - 2015

OFFICE OF THE REGIONAL ADMINISTRATOR

March 2, 2015

BY CERTIFIED MAIL

Curt Spalding, Regional Administrator
EPA New England, Region 1,
5 Post Office Square - Suite 100
Boston, MA 02109-3912
Certified # 7013 2250 0000 2096 4078

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415
Certified # 7013 2250 0000 2096 4092

Gina McCarthy, Administrator
US EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Certified # 7013 2250 0000 2096 4085

Re: Notice of Proposed Consent Decree in Clean Water Action v. Safety-Kleen Systems, Inc.
Case No. 1:14-cv-13606

Dear Sirs and Madam:

Enclosed pursuant to 40 CFR § 135.5 please find an executed copy of the parties' proposed Consent Decree resolving the above captioned action brought under the citizen suit provision of the Federal Water Pollution Control Act. Please feel free to call me if you have any questions about the enclosed. Thank you.

Sincerely,



Nora J. Chorover

Enclosure

cc: Martin Suuberg, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
Certified # 7013 2250 0000 2096 4108

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CLEAN WATER ACTION,

Plaintiff,

v.

SAFETY-KLEEN SYSTEMS, INC.,

Defendant.

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) Case No. 1:14-cv-13606-FDS
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CONSENT DECREE

WHEREAS, Clean Water Action is a nationwide non-profit organization working for prevention of pollution in the nation's waters, protection of natural resources, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work;

WHEREAS, Safety-Kleen Systems, Inc. ("Safety-Kleen") operates a operate a hazardous waste treatment, storage or disposal facility at 50A Brigham Street, Marlborough, Massachusetts (the "Facility");

WHEREAS, Clean Water Action alleges that storm water coming into contact with industrial activity at the Facility discharges into to the Town of Marlborough's municipal storm drain system and thence to the Sudbury Reservoir;

WHEREAS, storm water discharges associated with certain industrial activities are regulated pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (the "Act" or the "Clean Water Act") National Pollutant Discharge Elimination System ("NPDES") and general industrial storm water permit issued by the United States Environmental Protection

Agency, including any amendments thereto (the “MSGP”). See 33 U.S.C. §§ 1311(a), 1342(a), 1342(p); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008);

WHEREAS, on March 28, 2014, Clean Water Action provided notice of alleged violations of the Act, and of Clean Water Action’s intention to file suit against the Company to the Administrator of the United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region I; the Massachusetts Department of Environmental Protection; and to Safety-Kleen, pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

WHEREAS, on September 10, 2014, Clean Water Action filed a Complaint against Safety-Kleen in the United States District Court, District of Massachusetts;

WHEREAS, following receipt of the March 28, 2014 Notice, Safety-Kleen has taken certain steps, including retaining Fuss & O’Neill, a third party consulting firm, to continue stormwater monitoring activities at the site, perform an in depth review of the stormwater monitoring program, and oversee preparation and submittal of the Annual Comprehensive Site Inspection Report to EPA; and conducting a thorough investigation of the stormwater outfalls at the site, in order to develop revised best practices to ensure that sampling is performed at an appropriate frequency and corrective action is implemented in a timely fashion.

WHEREAS, Safety-Kleen anticipates that these steps, together with implementation of the measures set forth herein and in Safety-Kleen’s updated SWPPPs for the Facility, will enable them to comply with the requirements of the MSGP;

WHEREAS, the parties have decided it is in their mutual interest to resolve the litigation without the taking of any additional evidence or findings of fact or law;

WHEREAS, this Consent Decree shall be submitted to the United States Department of Justice for the 45 day statutory review period, pursuant to 33 U.S.C. § 1365(c) (“Consent Decree”).

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

INJUNCTIVE RELIEF

1. Safety-Kleen agrees to operate the Facility in compliance with the applicable requirements of the MSGP and the Clean Water Act.
2. Safety-Kleen shall implement the following measures:
 - A. Corrective Action. Safety-Kleen shall implement additional corrective action, consistent with the terms of the MSGP, to reduce silver and COD in the facility’s stormwater discharges.
 - B. Compliance Monitoring. Safety-Kleen shall ensure that samples and measurements taken are “representative of the volume and nature of the monitored activity.” Safety-Kleen shall fully comply with the terms of the MSGP, including Section 6 of the MSGP, and Appendix B, sections 10-12. Safety-Kleen shall implement monitoring procedures consistent with EPA’s Industrial Storm Water Monitoring and Sampling Guide (March 2009). Nothing in this paragraph limits or modifies Safety-Kleen’s sampling obligations under the MSGP.
 - C. Magnesium Monitoring and Corrective Action. Safety-Kleen shall monitor its discharges of magnesium in accordance with the benchmark monitoring requirements of the MSGP, and shall implement corrective action to reduce magnesium levels in its discharges to the extent required by the MSGP.

3. Safety-Kleen shall permit representatives of Clean Water Action to perform up to two site visits to the Facility during normal daylight business hours during each twelve (12) month period that this Consent Decree is in effect; provided that Clean Water Action gives Safety-Kleen at least two (2) business days' prior written notice. During these semi-annual site visits, Safety-Kleen shall provide Clean Water Action access to its SWPPP, Quarterly Visual Inspection Forms, Quarterly Visual Monitoring Inspection Forms, and Quarterly Sampling Analytical Forms.

4. For the term of this Consent Decree, Safety-Kleen shall provide Clean Water Action with copies of all documents that it submits to EPA, the Commonwealth of Massachusetts and/or the Town of Marlborough concerning the Facility's stormwater discharges, including but not limited to copies of all documents concerning the addition of stormwater controls, and all documents and reports submitted as required by the MSGP. Any documents submitted to a governmental entity pursuant to this sub-paragraph, such as quarterly Discharge Monitoring Reports ("DMRs"), Annual Reporting Forms [to the extent an annual report is required under the 2014 revisions to the MSGP], or documents concerning additional stormwater controls, shall be submitted to Clean Water Action by emailing them to nchorover@choroverlaw.com within three (3) business days of submission to the governmental entity.

5. For the term of this Consent Decree, Safety-Kleen shall provide Clean Water Action with copies of all laboratory reports and analytical results of storm water sampling performed by or for Safety-Kleen and all reports of the quarterly and annual Facility inspections and visual assessments required by the MSGP. Safety-Kleen Quarterly Visual Inspection Forms, Quarterly Visual Monitoring Inspection Forms and Quarterly Sampling Analytical Forms, including

laboratory results for the samples, shall be submitted to Clean Water Action with the Annual Report by emailing them to nchorover@choroverlaw.com.

PAYMENT, FEES AND COSTS

6. Within 15 days after the Effective Date of this Consent Decree, Safety-Kleen shall pay the sum of Ten Thousand Dollars (\$10,000) to the Massachusetts Rivers Alliance. The Payment shall be conditioned on the following: (a) the Payment or any portion thereof shall not be disbursed or otherwise granted directly or indirectly to Clean Water Action; and (b) projects funded by the Payment shall be designed to benefit water quality within 30 miles of the Facility. Payment shall be made by check or electronic funds transfer to Julia Blatt, Executive Director, Massachusetts Rivers Alliance, 14 Beacon Street, Suite 706, Boston, MA 02108. A copy of each such payment shall be provided to Clean Water Action by emailing to nchorover@choroverlaw.com.

7. Within 15 days after the Effective Date of this Consent Decree, Safety-Kleen shall pay the sum of Fifteen Thousand Dollars (\$15,000) to OARS For the Assabet, Sudbury and Concord Rivers. The Payment shall be conditioned on the following: (a) the Payment or any portion thereof shall not be disbursed or otherwise granted directly or indirectly to Clean Water Action; and (b) projects funded by the Payment shall be designed to benefit water quality within 30 miles of the Facility. Payment shall be made by check or electronic funds transfer to Alison Field-Juma, Executive Director, OARS, 23 Bradford Street, Concord, MA 01742. A copy of each such payment shall be provided to Clean Water Action by emailing to nchorover@choroverlaw.com.

8. Within 15 days of entry of this Consent Decree, Safety-Kleen shall reimburse Clean Water Action in the amount of Twenty Eight Thousand Dollars (\$28,000) to defray Clean Water

Action's attorneys' fees and costs (including experts' fees and costs) incurred up to the date of entry of this Consent Decree. Payments shall be made by check or by electronic funds transfer, payable to Law Office of Nora J. Chorover, Client Trust Account, and be delivered, if by check, by certified mail, return receipt requested, to Nora J. Chorover, Law Office of Nora J. Chorover, 11 Green Street, Boston, MA 02130.

9. Within 30 days of entry of this Consent Decree, Safety-Kleen will make a payment of \$10,000 to Clean Water Action to be placed in the Client Trust Account held for its benefit by the Law Office of Nora J. Chorover, to be used to reimburse Clean Water Action for fees and costs incurred to monitor Safety-Kleen's compliance with this Consent Decree for a term of two years after the date this Consent Decree is entered by the Court. Any funds remaining from the \$10,000 at the expiration of the two year term shall be remitted to Safety-Kleen within thirty days of the expiration of the two year term. Nothing in this paragraph shall restrict Clean Water Action's right to seek additional compensation for fees and costs it incurs to address Safety-Kleen's noncompliance with this Consent Decree.

MUTUAL RELEASES

10. Upon entry of this Consent Decree, Clean Water Action, on its own behalf and on behalf of its members, subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, covenants not to sue and hereby releases Safety-Kleen (and their respective parent corporations, subsidiaries, affiliates and each of their respective officers, directors, shareholders, employees, agents, attorneys, consultants, representatives, predecessors, successors, and assigns) and the owners of the land upon which the Facility is situated (and their respective parent corporations, members, subsidiaries, officers, directors, shareholders, employees, agents, attorneys, consultants, representatives, predecessors, successors, and assigns)

from, and waives all claims, whether known or unknown, for damages, penalties, fines, sanctions, injunctive relief, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses and any other claim, relief, or sum incurred or claimed or which could have been claimed in this Action, for the alleged failure of Safety-Kleen to comply with the Clean Water Act at the Facility, up to the date on which this Consent Decree is executed by the parties. Clean Water Action does not release any claims or defenses relating to the enforcement of this Consent Decree during its Term.

11. Safety-Kleen, on its own behalf and on behalf of subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases Clean Water Action (and its members, subsidiaries, successors, assigns, directors, officers, agents, attorneys, representatives, and employees) from, and waives all claims, whether known or unknown, which arise from or pertain to this Action, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters associated with or related to this Action. Safety-Kleen does not release any claims or defenses relating to the enforcement of this Consent Decree during its Term.

MISCELLANEOUS PROVISIONS

12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and the EPA. Therefore, upon signing of this Consent Decree by the parties, Clean Water Action shall serve, or cause to be served, copies of this Consent Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5.

13. Upon expiration of the forty-five (45) day review period provided by 33 U.S.C. § 1365(c)(3), the parties will jointly move the Court for entry of this Consent Decree.
14. The Effective Date of this Consent Decree shall be the date it is approved and entered by the Court.
15. The Term of this Consent Decree shall be from the Effective Date until two (2) years after the Effective Date.
16. This Consent Decree shall be binding on the parties and on their successors and assigns.
17. The Consent Decree may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document. Facsimile copies shall be deemed as originals and shall be binding on the parties.
18. In the event that any of the provisions of this Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.
19. The language in all parts of this Consent Decree, unless otherwise stated, shall be construed according to its plain and ordinary meaning.
20. The undersigned are authorized to execute this Consent Decree on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Consent Decree.
21. All agreements, covenants, representatives and warranties, express or implied, oral or written, of the parties concerning the subject matter of this Consent Decree are contained herein and this Consent Decree shall be deemed to constitute the entire agreement among the parties.
22. Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Clean Water Action pursuant to this Consent Decree shall be hand-delivered or sent by certified U.S. Mail, return receipt requested, and addressed as follows:

Nora J. Chorover
Attorney for Clean Water Action
Law Office of Nora J. Chorover
11 Green Street
Boston, MA 02130
nchorover@choroverlaw.com.com
Phone: 617-477-3550

Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Safety-Kleen pursuant to this Consent Decree shall be hand-delivered or sent by certified U.S. Mail, return receipt requested, and addressed as follows:

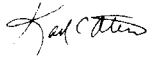
Timmery Fitzpatrick
Senior Environmental Attorney
Clean Harbors
P.O. Box 9149
42 Longwater Drive
Norwell, MA 02061-9149
(o) 781.792.5172
(c) 781.204.9253
fitzpatrick.timmery@cleanharbors.com

Each party shall notify the other of any change in contact information for the persons listed above within 14 days of any such change. Any notices or documents required or provided for by this Consent Decree may also be sent via electronic mail to the addresses listed above provided that transmission of such communications shall not be deemed made until confirmed by return email from the intended recipient.

23. This Court shall retain jurisdiction over this matter for the purpose of enabling the Parties to this Consent Decree to apply to the Court to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Consent Decree.

24. If for any reason the Court should decline to approve this Consent Decree in the form presented, the parties shall agree to work together cooperatively and expeditiously to modify the Consent Decree to endeavor to make it acceptable to the Court.

CLEAN WATER ACTION



By: Kathleen E. Aterno
Its: National Managing Director

Dated: February 27, 2015

SAFETY-KLEEN SYSTEMS, INC.

By:
Its:

Dated: _____

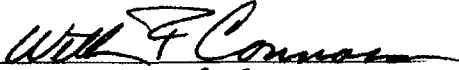
Signature line for Court

CLEAN WATER ACTION

By:
Its:

Dated: _____

SAFETY-KLEEN SYSTEMS, INC.


By: *William F. Connors*
Its: *Sr. Vice President, Compliance*

Dated: *2/27/2015*

Signature line for Court
